

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

EPISTAR CORPORATION,
Plaintiff,

-vs-

**LOWE'S COMPANIES INC., LOWE'S HOME
CENTERS LLC,**
Defendants.



6:20-CV-00420-ADA

ORDER

Came on for consideration is Plaintiff's April 23, 2021 Motion to Amend/Correct to Serve Supplemental Infringement Contentions and Defendant's July 8, 2021 Motion to Dismiss for Failure to State a Claim (First Amended Complaint). ECF No. 53 and 59 respectively. After full consideration of the parties' briefs and oral arguments, Plaintiff's Motion is **GRANTED** and Defendants' Motion is **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND

Epistar filed suit in May 2020 alleging infringement of five patents. ECF No. 1. Along with the Complaint, Epistar included five claim charts identifying a single accused product – the GE Soft White ClassicLED 4.5W A19 Medium Base Bulb. ECF No. 1-6, through 1-10. Epistar's deadline to serve Final Infringement Contentions ("FICs") elapsed on April 8, 2021. (ECF No. 36.) Epistar missed that deadline and instead filed a motion captioned Plaintiff's Opposed Motion for Leave to Serve First Supplemental Infringement Contentions ("Motion for Leave"). ECF No. 53. The Motion for Leave addressed six products associated with six product series (GE Classic, GE Refresh, GE Relax, GE Basic, GE Reveal, and GE Vintage). ECF No. 53-5 through 53-9.

Because Epistar's testing of Defendants' products was ongoing, in the same Motion for Leave, Epistar also sought leave to further supplement its infringement contentions on June 30, 2021. On June 30, 2021 Epistar served its Second Supplemental Infringement Contentions, which, *inter alia*,

updated the list of Accused Products to include additional item and model numbers that had either become available on Lowe's website since April 2021 or that testing by Epistar's experts since April 23, 2021 had allegedly shown to infringe Epistar's patents.

On June 3, 2021, Epistar filed its First Amended Complaint. ECF No. 56 ("FAC"). The sole difference between the original and First Amended Complaint is the addition of the following passage: "At least Lowe's GE Classic Series lightbulbs, GE Refresh Series lightbulbs, GE Relax Series lightbulbs, GE Basic Series lightbulbs, GE Reveal Series lightbulbs, and GE Vintage Series lightbulbs that include one or more LED filaments infringe the asserted claims of the patents-in-suit including, but not limited to, LED lightbulb models listed in Exhibit 18." *Id.* ¶ 30. Exhibit 18 to the First Amended Complaint identifies by item and model numbers specific GE LED filament bulbs sold by Defendants that allegedly fall into the listed product series, similar to the April 23 First Supplemental Infringement Contentions (ECF Nos. 53-05 - 53-09).

The First Amended Complaint correlates Accused Products to the specific patents. Namely, Paragraph 30 defines "Accused Products" as including the item and model numbers listed in Exhibit 18. Then, each cause of action asserts that the Accused Products (as defined) infringe each asserted patent, respectively. *See, e.g.,* FAC ¶ 54 ("Defendants have infringed, either literally and/or under the doctrine of equivalents, one or more claims of the '068 patent and continue to infringe in this District, by making, using, selling, offering for sale, and/or importing into the United States products including, but not limited to, the Accused Products, without the permission of Epistar") (emphasis added).

On June 29, 2021, the Court informed the parties via email that it "is inclined to grant [Epistar's Motion for Leave] under the condition that Defendants receive enough time to respond to the amended contentions." 6/29/21 email from Mr. Pearson. On July 6, 2021, the Court entered the following order: "If the parties can come to an agreement on a revised schedule that allows Plaintiff to amend their infringement contentions while permitting Defendant more time to respond, then the motion will be

granted.” 07/06/2021 Text Order. The parties met and conferred extensively but could not come to an agreement on a revised schedule.

Defendants oppose the Motion for Leave and seek to dismiss the portion of Epistar’s First Amended Complaint corresponding to Exhibit 18 alleging that it lacks plausible infringement allegations. ECF No. 59 at 7.

II. LEGAL STANDARD

Upon a showing of good cause, a court may permit plaintiff to amend its infringement contentions. See Fed. R. Civ. P. 16(b)(4); *Georgetown Rail Equip. Co. v. Holland L.P.*, Case No. 6:13-cv-366-JDL, 2014 U.S. Dist. LEXIS 198784, at *6, *13 (5th Cir. Oct. 7, 2014) (“relevant factors in this case favor granting the motion for leave to amend infringement contention”). Courts evaluate four factors to determine whether there is good cause to modify the scheduling order: (1) the reason for the delay and whether the party has been diligent; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure any prejudice. See *Georgetown Rail Equip. Co.*, 2014 U.S. Dist. LEXIS 198784, at *7.

The Federal Rules of Civil Procedure require a plaintiff to provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R Civ. P. 8(a)(2). The primary purpose of a complaint is not to prove a case, but only to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964 (2007).

III. ANALYSIS

A. Epistar’s Motion for Leave does not unfairly prejudice Defendants

The Court finds the Plaintiff diligent in pursuing testing the products at issue and the Court finds Epistar’s request for leave important for proving its infringement case. Further, the Court is of the opinion that any prejudice experienced by Defendant is mitigated by granting Defendants additional

time to respond. If Defendants believe the current schedule unduly prejudices them and they are unable to agree with Plaintiff on a schedule going forward, they are instructed to contact the Court to seek relief.

In the spirit of the Court's June 29 email and associated July 6, 2021 text order, the Court **GRANTS** Epistar's Motion for Leave. The Motion is granted under the condition that Defendants receive enough time to respond to the amended contentions.

B. The accused products that do not fall within any of the six product series are DISMISSED

Exhibit 18 of Epistar's Amended Complaint identifies products and correlates some of those products with specific product series which are then tied to certain patents or patent claims. ECF No. 56-18. Federal Rule of Civil Procedure 11 bars vague and evidentially unsupported allegations as an exhibit to a pleading. Because some identified products do not fall into at least one of the identified product series (GE Classic, GE Refresh, GE Relax, GE Basic, GE Reveal, and GE Vintage), they lack a basis to assert infringement. Thus, Defendants Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART** and the products the Court finds do not fall into one of the aforementioned product series are **DISMISSED**. Those products are listed below:

DESCRIPTION	MODEL NO.
GE 25-Watt EQ A15 Amber Dimmable Decorative Light Bulb	Model #36501
GE 60-Watt EQ CAC Daylight Dimmable Candle Light Bulb	Model #43245
GE 60-Watt EQ G25 Daylight Dimmable Candle Light Bulb	Model #43310
GE 60-Watt EQ G25 Soft White Dimmable Globe Light Bulb	Model #43316
GE 60-Watt EQ G25 Daylight Dimmable Globe Light Bulb	Model #43317
GE 25-Watt EQ CAC Soft White Dimmable Candle Light Bulb	Model #45555
GE 25-Watt EQ CAC Daylight Dimmable Candle Light Bulb	Model #45567

GE 25-Watt EQ CAM Daylight Dimmable Candle Light Bulb	Model #45577
GE 40-Watt EQ CAC Soft White Dimmable Candle Light Bulb	Model #45640
GE CA GE LED 40W CA10M RLX CL	Model #46937
GE HD 65-Watt EQ PAR36 Daylight Dimmable LED Light Bulb k)	Model #46963
GE 60-Watt EQ A19 Amber Dimmable Edison Light Bulb	Model #48556
GE 25-Watt EQ A15 Amber Dimmable Decorative Light Bulb	Model #48767
GE LED 25-Watt EQ ST19 Warm Candle Light Dimmable Edison Light Bulb	Model #76018
GE LED 60-Watt EQ B10 Soft White Dimmable Decorative Light Bulb	Model #93097959
GE 3-Watt EQ A15 Green LED Light Bulb	Model #93116856
GE LED+ 60-Watt EQ CA11 Daylight Dimmable Decorative Light	Model #93121491
GE LED+ 60-Watt EQ CA11 Soft White Dimmable Decorative Light Bulb	Model #93121492
GE LED+ Dusk to Dawn EQ CAM Candle Light Bulb	Model #93121493
GE LED+ Dusk to Dawn EQ CAM Candle Light Bulb	Model #93121494
GE Ultra Bright 150-Watt EQ A23 Soft White Dimmable LED Light Bulb	Model #93121637
GE General Purpose LED Light Bulbs 40-Watt EQ A15 Daylight Dimmable LED Light Bulb	Model #93121642
GE Decorative Light Bulbs 60-Watt EQ B10 Color-enhancing Dimmable Decorative Light Bulb	Model #93121644
GE Ultra Bright LED 100-Watt EQ CAM Soft White Dimmable Decorative Light Bulb	Model #93121707
GE Ultra Bright LED 100-Watt EQ CA12 Daylight Dimmable Decorative Light Bulb	Model #93121708
GE Ultra Bright 100-Watt EQ A15 Soft White Dimmable LED Light Bulb	Model #93121709
GE Ultra Bright LED 150-Watt EQ A23 Soft White Dimmable LED Light Bulb	Model #93121902
GE Ultra Bright 150-Watt EQ A23 Daylight Dimmable LED Light Bulb	Model #93122342
GE Classic Plastic 40-Watt EQ A19 Soft White Dimmable LED Light Bulb	Model #93122480
GE Classic Plastic 40-Watt EQ A19 Daylight Dimmable LED Light Bulb	Model #93122482
GE Classic Plastic 60-Watt EQ A19 Soft White Dimmable LED Light Bulb	Model #93122484

GE Classic Plastic 60-Watt EQ A19 Soft White Dimmable LED Light Bulb	Model #93122485
GE Classic Plastic 60-Watt EQ A19 Daylight Dimmable LED Light	Model #93122536
GE Classic 100-Watt EQ A19 Daylight Dimmable LED Light Bulb	Model #93122538
GE General Purpose 60-Watt EQ A19 Cool Daylight Dimmable LED Light Bulb	Model #93122568
GE General Purpose 100-Watt EQ A21 Cool Daylight Dimmable LED Light Bulb	Model #93122668
GE Decorative Light Bulbs 40-Watt EQ B11 Cool Daylight Dimmable Candle Light Bulb	Model #93122671
GE Decorative Light Bulbs 60-Watt EQ B11 Cool Daylight Dimmable Candle Light Bulb	Model #93122672
GE Decorative Light Bulbs 60-Watt EQ B11 Cool Daylight Dimmable Candle Light Bulb	Model #93122673
GE Cool Daylight 40-Watt EQ A15 Daylight Dimmable LED Light Bulb	Model #93122675
GE Cool Daylight 60-Watt EQ A15 Cool Daylight Dimmable LED Light Bulb	Model #93122746
GE Cool Daylight 60-Watt EQ A15 Cool Daylight Dimmable LED Light Bulb	Model #93122747
GE Cool Daylight 40-Watt EQ G25 Cool Daylight Dimmable Globe Light Bulb	Model #93122749
GE Cool Daylight 60-Watt EQ G25 Cool Daylight Dimmable Globe Light Bulb	Model #93122750
GE LED+ Timer 7-Watt EQ A19 Soft White LED Light Bulb	Model #93124530
GE LED 40-Watt EQ T8 Amber Dimmable Candle Light Bulb	Model #93129167
GE LED 40-Watt EQ T8 Amber Dimmable Candle Light Bulb	Model #93129168
GE Sunfilled 60-Watt EQ A21 Soft White Dimmable LED Light Bulb	Model #93129184
GE Sunfilled 60-Watt EQ A21 Daylight Dimmable LED Light Bulb	Model #93129185
GE Ultra Bright 150-Watt EQ A23 Daylight Dimmable LED Light Bulb	Model #93129224
GE LED 40-Watt EQ T8 Amber Dimmable Candle Light Bulb	Model #93129231
GE 60-Watt EQ CA10 Soft White Dimmable Candle Light Bulb	Model #93129286
GE 60-Watt EQ CA10 Daylight Dimmable Candle Light Bulb	Model #93129287
GE 60-Watt EQ A19 Soft White LED Light Bulb	Model #93129288
GE 60-Watt EQ A19 Daylight LED Light Bulb	Model #93129289

GE LED 60-Watt EQ A19 Soft White LED Light Bulb	Model #93129394
GE LED 60-Watt EQ A19 Daylight LED Light Bulb	Model #93129395
GE LED 60-Watt EQ B11 Soft White Candle Light Bulb	Model #93129398
GE LED 60-Watt EQ B11 Daylight Candle Light Bulb	Model #93129399

If the parties believe that one or more was included or omitted in error, the Court should be motioned accordingly.

IV. CONCLUSION

Because the Court finds Plaintiff's Motion for Leave diligent and important while mitigating any prejudice experienced by Defendant by granting Defendants additional time to respond, Epistar's Motion for Leave is **GRANTED**. Because some identified products do not fall into at least one of the identified product series (GE Classic, GE Refresh, GE Relax, GE Basic, GE Reveal, and GE Vintage), the Court finds they lack a basis to assert infringement and they are therefore **DISMISSED**. Thus, Defendants Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**.

SIGNED this 4th day of August, 2021.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE